

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Wright Analyst: Gloria McConnell Bill Number: AB 1044

Related Bills: _____ Telephone: 845-4336 Amended Date: 05/28/99

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: FTB Collection of Student Aid Commission Outstanding Accounts Receivable

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE POLICY CONSIDERATIONS stated in the previous analysis of bill as introduced 02/25/99.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 25, 1999, STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

Under this bill, before a delinquent student loan could be referred to Franchise Tax Board (FTB) for collection, the Student Aid Commission (commission) would be required to provide certain notices and hearings, including "actual" notice at the debtor's last known address. The notices generally would delay referral of outstanding student loans to FTB by 30 days.

Additionally, under this bill,

1. FTB would be required expressly to provide notice to the debtor at the most recent address of record provided by the commission or last address known to the FTB. If the mail is returned as undeliverable or FTB otherwise knows the mail was misdirected, FTB would be required to use reasonable diligence to ascertain the current address of the debtor and provide notice at that address;
2. Amounts collected from wages would have to be returned if the debtor establishes by a preponderance of the evidence that FTB did not provide the debtor with the notice as required above;
3. FTB would be required to wait at least 15 days (instead of the current 10 days) after it issues notice to the debtor containing certain prescribed information written in Spanish and English and requests payment before it can proceed with collection action;
4. FTB would be limited to levying on 10% of a debtor's wages unless a court has determined in a final judgment or order that a greater amount may be lawfully levied;
5. FTB would be limited to levying on, in the aggregate, 25% of the amount in a debtor's bank account(s) unless the amount in the bank account(s) is in excess of \$2,000, in the aggregate, at the time of levy;
6. FTB would be allowed to adopt regulations to implement the provisions of this bill; and
7. In developing any notice required by the Government Code for collection of delinquent student loans, the FTB would be required to consult with

Board Position:

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Department/Legislative Director

Date

Johnnie Lou Rosas

6/17/1999

knowledgeable advocates who represent debtors in defaults on student loans.

SUMMARY OF AMENDMENT

The May 28, 1999, amendments would:

- Allow FTB to levy on more than 10% of a debtor's wages if a court determines in a final judgment or order that a greater amount may be lawfully levied (above #4);
- Resolve the Implementation Consideration raised in FTB's previous analyses by allowing, rather than requiring, FTB to adopt regulations to implement the provisions of this bill (above #6); and
- Require FTB to consult with knowledgeable advocates who represent debtors in defaults on student loans in developing any notice required by the Government Code for collection of delinquent student loans (above #7).

SPECIFIC FINDINGS

Currently, FTB is authorized to administratively garnish wages to collect taxes through an order to withhold (levy) under the Wage Garnishment Law. The levy is limited to 25% of the debtor wages. Under AB 255 (Stats. 96, Ch. 1001), FTB was given the authority to collect delinquent student loans as though they were taxes, which generally would include administratively levying, without obtaining a judgment or other order of the court, on 25% of the debtor's wages. Federal law also provides for the administrative collection of delinquent student loans. If using the federal provisions, however, the amount of wages subject to levy is 10%. It is unclear whether FTB's California authority to levy on 25% of wages is preempted by the federal provisions to levy on 10% of wages. Therefore, FTB currently administratively limits its wage levies to 10%. Staff understands that Michigan is using its own state administrative levy authority and levying on 25% of the debtor's wages.

Under this bill, FTB could levy on more than 10% of a debtors wages if a court were to determine an amount greater than 10% of the debtor's wages could be lawfully levied.

Currently, under FTB's administrative collection authority under the Revenue and Taxation Code, it levies on 100% of the amount in a debtor's bank account, but in the event the debtor can show the levy creates a hardship, FTB releases the levy. In the event of a dispute, the Taxpayer Advocate for laws administered by FTB is available to the debtor.

Under this bill, in the event the debtor's (bank) account or accounts in the aggregate contain \$2,000 or less, FTB's levy would be limited to 25% in the aggregate of that amount.

Currently, once FTB receives an account from the commission, it sends a notice of the amount due to the address of record or last known address. In no event other than an overpayment is FTB authorized to return to the debtor an amount it collects.

Under this bill, if notice of the amount due is returned as undeliverable or FTB knows the notice is misdirected, FTB must use reasonable diligence to ascertain the current address and, if the address is ascertained, provide notice to the debtor at that address.

If the debtor can establish by a preponderance of the evidence that the FTB did not provide the notice as required, all amounts collected by levy on wages must be returned to the debtor.

Policy Considerations

This bill generally is the same as AB 2004, as amended July 2, 1998. To resolve policy/implementation considerations raised in FTB's analysis of that bill, the Senate Appropriations Committee took amendments in committee (August 20, 1998) and passed the bill. Governor Wilson, however, subsequently returned the bill without signature stating he did not believe that the rights of severely delinquent loan debtors should be expanded beyond the rights of those who attempt to repay their debts. Additionally, it was stated that he believed that current law provides a reasonable balance between the due process rights of students and the right of the state to collect repayment of delinquent loans.

The policy considerations raised in 1998 generally are the same as those currently raised with respect to this bill:

- This bill would implement due process protections before debts may be referred to FTB that go beyond those already provided under both federal and California laws. Moreover, the bill: (1) in reality, though it may appear otherwise, would limit the amount of wages subject to levy to 10% since it is unclear whether FTB could (or would) challenge the 10% limitation in court given the statute specifically directs FTB to limit collections to 10%; (2) specifically would limit the amount in bank accounts that would be subject to levy; and (2) would require that the amounts collected by levy on wages be returned to the debtor merely because FTB does not provide required additional notice, even though the debt has been determined with all required due process, continues to be past due, and a private collection agency had tried to collect the debt for at least nine months prior to referral of the debt to FTB.

Additionally, in setting a limit on the amount subject to collection in a bank account would increase the work for the depository institutions to comply with FTB's levies for delinquent student loans. Currently, all FTB levies are handled by depository institutions in the same fashion. Only for delinquent student loans withholding orders would depository institutions have to check the balance of each account at the time of levy to determine the amount that may be withheld.

- To the extent the collection of delinquent student loans under this bill would differ from the collection of taxes, FTB's collection efficiencies may diminish.

Implementation Considerations

This bill requires that the FTB to consult with knowledgeable advocates who represent debtors in default on student loans in developing any notice required by law in the enforcement of delinquent student loans. To a certain extent the issuance of required notices may be delayed pending consultation with advocates; however, any delay is not expected to be significant.

FISCAL IMPACT

Departmental Costs

This bill would not significantly increase departmental costs.

Tax Revenue Estimate

Based on the discussion below, the collection impact of this bill is as follows:

Estimated Collections Impact AB 1044		
For Referrals of		
Student Aid Commission's Outstanding Accounts Receivables		
Fiscal Year Impact		
(In Millions)		
1999-0	2000-1	2001-2
- \$3	Minor Loss	Minor Loss

Minor Loss = Less than \$400,000

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Tax Revenue Discussion

The collection impact of this bill would depend on (1) the number of referrals and collection activities that would be delayed as a result of additional notices and hearings required by the commission prior to referral of delinquent accounts to FTB, and (2) the reduction in the amount of collections as a result of limiting FTB to levying on, in the aggregate, 25% of the amount in the debtor's bank account(s), unless the amount in the bank account(s) is in excess of \$2,000, in the aggregate, at the time of levy.

This estimate is based on the results of the current Student Loan Collection Program. It is estimated that this bill would delay account referrals to FTB by approximately two months in the first year of implementation (1999-0), thereby reducing collections by an estimated \$2.5 million. For purposes of this analysis, staff estimated on average a two-month delay in the commission's referral of accounts to FTB because of the new 30-day notice required by the commission before an account may be referred to FTB;; additional inquiries relating to requests for and the holding of hearings; and implementation of other changes required by this bill. (Additionally, the commission may find it necessary to hold the account for an additional time beyond the 30 days to allow for last-minute payments or telephone calls)

In addition, actual collections are estimated to decrease by approximately \$350,000 annually, as a result of limitations placed on the amount of money that can be levied on bank accounts.

BOARD POSITION

Pending.